

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VIRGINIA HOERNER,

Plaintiff,

**REPORT AND
RECOMMENDATION**

-against-

CV 06-4126 (LDW)

WALDBAUMS, INC.

Defendants.

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On or about July 3, 2007 the court sent a Notice to plaintiff which advised such party that more than 120 days had passed since the filing of the summons and complaint and that plaintiff had not effected service of such documents.

In the Notice the court quoted Rule 4(m) of the Federal Rules of Civil Procedure. Plaintiff has not taken any step to move for an extension of time to serve the summons and complaint or filed proof of service of the summons and complaint. Accordingly, plaintiff has not complied with Rule 4(m). It is therefore

Reported and Recommended that the court on its own initiative dismiss the within action without prejudice. Fed.R.Civ. P. 4(m).

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within fifteen (15) days of the date of this Report. Failure to file objections within this period waives the right to appeal the District Court's order. See 28 U.S.C. section 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. June 30, 1997); *Savoie v. Merchants Bank*, 84F.3d 52, 60 (2d Cir. 1996); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 299 (2d Cir. 1992).

Dated: Central Islip, New York
August 6, 2007

MICHAEL L. ORENSTEIN
United States Magistrate Judge